

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MICHAEL STEVENS,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 233153

Saginaw Circuit Court

LC No. 97-013871-FC

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree felony murder, MCL 750.316(1)(b), and conspiracy to commit armed robbery, MCL 750.157(a). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to two concurrent terms of life imprisonment. We affirm.

I

Defendant’s first issue on appeal is that he was improperly denied his right of self-representation. We disagree. The determination whether self-representation is appropriate is largely a matter within the discretion of the trial judge. *People v Adkins (After Remand)*, 452 Mich 702, 721 n 16; 551 NW2d 108 (1996). A defendant must exhibit an intentional relinquishment or abandonment of the right to counsel, and the court should indulge every reasonable presumption against a waiver of that right. *Id.* at 721.

The right of self-representation is guaranteed by both Constitution and statute, US Const, Am VI; Const 1963, art 1, § 13; MCL 763.1, but this right is not absolute. *People v Anderson*, 398 Mich 361, 366; 247 NW2d 857 (1976). Before granting a defendant’s request to proceed in propria persona, the trial court must determine that (1) the defendant’s request is unequivocal, (2) that the defendant is knowingly, intelligently, and voluntarily asserting his right, and (3) “that the defendant’s acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court’s business.” *Id.* at 367-368.

The record supports the trial court's denial of defendant's request for self-representation because it would unduly disrupt the court. In addressing the court regarding defendant's motion, defense counsel stated that defendant was not dissatisfied with counsel, but indicated that he (defendant) wanted to make certain that his story got out, and felt he could do that better through himself; however, defendant also expressed concerns that he is "a very excitable person and very aggressive person" and "may have to be bound and gagged." The record indicates that during the nearly four years that this case was before the trial judge, defendant filed numerous exhaustive letters with the court complaining of judicial procedures, criticizing the handling of his case, and alleging a legal conspiracy, bribery, and coercion with respect to the charges against him. As the court noted, defendant was already serving a substantial sentence for a prior conviction and would have little motivation for adhering to the court's protocol and procedures during trial. The record supports the court's reasons for denying defendant's motion. *People v Ramsdell*, 230 Mich App 386, 406; 585 NW2d 1 (1998); *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997).

Further, even absent a finding that defendant's self-representation would be disruptive, the record supports additional reasons for the denial of defendant's motion. The record does not establish that defendant made an unequivocal request to represent himself. *People v Rice*, 459 Mich 899; 589 NW2d 280 (1998), mod on other grounds 459 Mich 929 (1998); *People v Rice (On Remand)*, 235 Mich App 429, 434; 597 NW2d 843 (1999). This Court will not reverse where the trial court reaches the right result for the wrong reason. *Ramsdell, supra* at 406.

In addressing the court on the morning of trial, defendant complained that defense counsel had no witnesses, no defense, and no strategy planned and was not adequately representing defendant. Along with his motion to proceed without counsel, defendant also filed a "motion for provision of essential legal materials with in (sic) which to effectively represent himself."¹ Defendant's motion included a lengthy list of legal materials necessary for self-representation and requested a memory capable typewriter, accessories, and supplies, and stamps. In light of defendant's prerequisites for self-representation, the record does not support a conclusion that his request for self-representation was unequivocal. *Anderson, supra* at 367; *People v Yeoman*, 218 Mich App 406, 415; 554 NW2d 577 (1996). Further, under these circumstances, the record supports a finding that defendant's self representation would be unduly burdensome for the court. *Anderson, supra* at 367.

II

Defendant's second issue on appeal is that his incriminating statements were admitted against him in violation of his Fifth Amendment right to counsel under *Miranda*.² We disagree. Because defendant failed to preserve this issue for appellate review, our consideration is limited to whether there is plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

¹ Defendant filed this motion, as well as several other documents, in propria persona even though he was represented by counsel.

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Once a defendant invokes his Fifth Amendment right to counsel, police may not continue questioning the defendant without counsel present unless the defendant initiates the contact. *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880, 68 L Ed 2d 378 (1981); *People v Paintman*, 412 Mich 518, 529; 315 NW2d 418 (1982). However, a defendant who requests counsel can waive this right. *Id.* at 528.

Defendant invoked his right to counsel, but months later received an investigative subpoena. Investigative subpoenas are initiated by a prosecutor. MCL 767A.2(1). Investigative subpoenas include a statement that a person may have legal counsel present at all times during questioning, MCL 767A.4(g), and a person must be advised of his constitutional rights against compulsory self-incrimination. MCL 767A.5(5). Before attending the proceeding, defendant consulted with an attorney and invoked his right to remain silent on the advice of counsel. Defendant's earlier invocation of his right to counsel was not violated by the issuing of the investigative subpoena because defendant had the right to, and did, contact counsel.

Weeks after the proceeding, defendant initiated contact with the prosecutor's investigator. "*Edwards* does not foreclose finding a waiver of Fifth Amendment protections after counsel has been requested, provided the accused has initiated the conversation or discussions with the authorities." *Minnick v Mississippi*, 498 US 146, 156; 111 S Ct 486; 112 L Ed 2d 489 (1990). In this case, defendant's right to counsel was not violated because he reinitiated contact.

III

Defendant's third issue on appeal is that the trial court abused its discretion in failing to appoint an expert witness to testify concerning defendant's confession. We disagree. The decision to appoint an expert is within the trial court's discretion and reviewed for abuse of that discretion. *People v Herndon*, 246 Mich App 371, 398; 633 NW2d 376 (2001). An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1997).

Defendant sought a court-appointed expert witness in psychology to explain why he confessed to a crime that he later claimed he did not commit. Defendant claimed that he gave the incriminating statements under the stress of incarceration and to gain certain benefits from the police, including cigarettes (to which he was allegedly addicted), a fast food meal, favorable treatment within the Department of Corrections, and immunity for his brother who was connected with the charged offense.

Expert witness testimony is admissible to explain a defendant's psychological makeup at the time of a confession and the reasons why a defendant confessed to a crime that he later claimed he did not commit. *People v Hamilton*, 163 Mich App 661, 663-665; 415 NW2d 653 (1987). An indigent defendant must show a nexus between the facts of the case and the need for an expert and that he cannot otherwise proceed safely to trial without the expert. *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995); *People v Leonard*, 224 Mich App 569, 582; 569 NW2d 663 (1997).

Defendant had adequate opportunity to present his claim that his confessions were false and to present his motivations and explanation for falsely confessing. He was permitted to examine witnesses and introduce extensive evidence concerning his claim that his statements were induced because of specific psychological stresses. See *People v Manser*, 250 Mich App 21, 32-33; 645 NW2d 65 (2002). When an expert witness has been denied and a defendant is challenging the denial on due process grounds, a defendant must have made a timely request for an expert witness, the court must have improperly denied the request, and the denial must have rendered the defendant's trial fundamentally unfair. *Leonard*, supra at 584. We cannot conclude that the court's denial was improper or that defendant's trial was rendered fundamentally unfair.

IV

Defendant's fourth issue on appeal is that the trial court abused its discretion by admitting a club without a sufficient foundation that connected the club with defendant. We disagree. The decision to admit evidence is within the trial court's discretion and is reviewed for an abuse of that discretion. *Sawyer*, supra at 5.

The admission of physical evidence requires that a proper foundation be laid and that the articles be identified as that which they purport to be and that they are shown to be connected with the crime or with the accused. *People v Furman*, 158 Mich App 302, 331; 404 NW2d 246 (1987). Identification of an object does not have to be positive, absolute, certain, or wholly unqualified. *People v Rojem*, 99 Mich App 452, 458; 297 NW2d 698 (1980).

The club was connected to defendant through the testimony of a friend. Moments before her murder—the result of being beaten with an object such as a club—the victim described a black man in the motel lobby with a large stick in his back pocket. Because the prosecutor was not arguing that the club was definitely the murder weapon, only that the club was similar to that described by the victim and used in her murder, the trial court did not abuse its discretion in admitting the club into evidence.

V

Defendant's final issue on appeal is that he involuntarily confessed to the murder. We disagree. The trial court's determination that a statement was voluntary will not be reversed unless the determination was clearly erroneous. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990).

The right against compelled self-incrimination is protected by the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 17; *Herndon*, supra at 395. The test to determine if a confession was voluntary is whether, considering the totality of the surrounding circumstances, "the confession is 'the product of an essentially free and unconstrained choice by its maker,' or whether the accused's 'will has been overborne and his capacity for self-determination critically impaired'" *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (citation omitted).

In determining whether a statement is voluntary, the following factors should be considered, although none of these factors is determinative:

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.* at 334.]

In this case, defendant was repeatedly advised of his *Miranda* rights and his rights with regard to the investigative subpoena. Defendant was allowed to, and did, contact his attorney repeatedly. See *People v Sexton (After Remand)*, 461 Mich 746, 753-754; 609 NW2d 822 (2000). Defendant made a calculated decision to attempt to benefit from the situation when he waived his *Miranda* rights and confessed to the murder. While defendant may now regret his decision, his regret is not evidence of police compulsion. *People v Daoud*, 462 Mich 621, 642-643; 614 NW2d 152 (2000).

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell